IN THE

Supreme Court of the United States

October Term, 1942

No. 175

INTERSTATE COMMERCE COMMISSION et al.,
Appellants,

vs.

INLAND WATERWAYS CORPORATION et al.,
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

REPLY BRIEF ON BEHALF OF APPELLANTS,

THE BALTIMORE AND OHIO RAILROAD COMPANY, THE NEW YORK CENTRAL RAILROAD COMPANY, THE NEW YORK, CHICAGO, AND ST. LOUIS RAILROAD COMPANY, THE PENNSYLVANIA RAILROAD COMPANY, ERIE RAILROAD COMPANY AND THE CHESAPEAKE AND OHIO RAILWAY COMPANY,

TO BRIEF OF APPELLEES, INLAND WATERWAYS CORPORATION et al.

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Solicitor for The New York Central Railroad Company.

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January 7, 1943.

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TO BRIEF OF APPELLEES, INLAND WATERWAYS CORPORATION et al.

REASONS FOR PROPOSED TARIFF CHANGE

Appellees state (Page 7) that the eastern lines made the proposed change in the hope that the inbound movement of grain to Chicago would be driven off the barges onto the rails. It was shown that the eastern railroads had much mileage in Illinois, and that the competition of the waterways was being felt more and more east of the Indiana-Illinois State line, (R. 265). It was shown that the present application of the proportional rates resulted in a total through charge on barge-rail traffic from the barge points of origin in Illinois to destinations in the East, lower than the rail charge from Chicago on local business and lower, in fact, than the rail charge from a wide area in Indiana to the same eastern destinations (see Exhibit 5, R.E. 35, explained R. 216, introduced R. 220, and Exhibit 6, R.E. 37, explained R. 217, introduced R. 220). Action was necessary to prevent further reductions and ever spreading disturbance of the rate level in and east of the barge origin area (R. 265, 266). The price paid to the producers along the waterway is the Chicago price less the cost of getting it to Chicago (R. 820, 822). The proposal will not change the cost of transportation by water from Illinois origins to Chicago. It was shown that the waterway would continue to handle the grain (R. 452, 486, 1111). Grain trucked to Chicago from this Illinois origin area has resulted in approximately the same price to the farmer as the barge grain (R. 656). The proportional rates do not now apply on truck arrivals from this Illinois origin area (R. 493). The Commission was justified in finding, as it did in 246 I.C.C. 353, 375, that if the application were to be continued it would disrupt the grain rate structure as far east as Painesville and East Liverpool, Ohio.

See, also, the conclusions of the Commission on reconsideration, 248 I.C.C. 307, 309, and 311, where it is stated, "The facts of record, as detailed by the Division and summarized herein, clearly show that respondents are justified under Section 1, in treating the ex-barge traffic the same as local or ex-

truck traffic and that the proposed schedules cannot be condemned as unlawful under Sections 2 and 3 of the Act."

Appellees state, Page 12, that the disturbance in the rail rate structure was limited entirely to the establishment of reduced rates *to Chicago*, as found by the District Court. This is in error as shown above and in our brief dated December 17, 1942 beginning at page 66.

Appellees at page 12 state that the proportional or reshipping rates would still apply in connection with the inbound intrastate rates, if the inbound charges were set up to the basis of the inbound interstate rates. There are two destination territories. The Ex-Northwest proportional rate would not apply on ex-rail grain from the Illinois origin area in any event, because such ex-rail grain would not meet with the terms of the note governing application of such proportional, since it would not originate in the Northwest (page 89 of our brief dated December 17, 1942). To destinations in the East, the application of the proportional rates is covered by the provisions of Note 20 (page 87 of our brief dated December 17, 1942). That note contains a provision that the rates will only apply:

> "On such traffic when originating at points from which no joint through commodity rates are in effect in connection with the inbound carrier via the reshipping point from original point to final destination."

There is a full line of one-factor joint through commodity rail rates from this Illinois origin area to the East (Exhibit 13, R.E. 60, introduced R. 237). Such rail grain would have to pay for its through movement, the correct through tariff rate from origin to destination. *A. T. & S. F. Ry. Co. v. Robinson*, 233 U.S. 173, 181. *Southern Ry. v. Prescott*, 240 U.S. 632, and cases cited at 638. This Court has held that the shippers are not concerned with merely the divisions of such joint rates. *L. & N. R.R. v. Sloss-Sheffield Co.*, 269 U.S. 217, 234.

The Division in its decision, 246 I.C.C. 353, referred to this inbound movement from Illinois to Chicago on the intrastate rail rates (367), and stated in connection therewith at page 372: "The rate tariff publishing the inbound intrastate rates to Chicago specifically prohibits transit arrangements. Since the corn moving into Chicago on intrastate rates is not available for transit, Chicago is its final destination. It follows that the local rate beyond Chicago applies in the absence of a tariff provision preserving the fictional through movement." No modification of this finding was made by the Commission in later decision 248, I. C. C. 307.

HISTORY OF WORDING OF THE NOTES

Appellees state, in Note 12 on page 9, that changes in the wording of the tariffs were made in 1935 in order that the Northwest proportional would apply on boat arrival grain without specification of origin territory. It is shown in Exhibits 96, 98, and 99 (R.E. 136, et seq, introduced as a result of a request by counsel for Appellees, R. 1660, the Examiner ruling at R. 1661, that the material could be submitted fifteen days after the hearing), that the various roads made this change in the wording of the tariffs in 1932 (this being shown as to The Baltimore and Ohio at R. E. 138, The Pennsylvania at R.E. 142, Pere Marquette at R.E. 146, Erie at R.E. 148 and 157, Michigan Central at R. E. 149, Grand Trunk at R.E. 157, N.Y.C. & St. L. at R.E. 160, and Wabash at R.E. 161). It will be noted that by these changes in 1932 the note governing the ex-Northwest proportional was made to apply "on shipments which arrived by boatlines at Chicago, Illinois" and other named ports. Note 20, governing application of proportional rates to the East, has been effective in its present form since January 15, 1924 (R.E. 19, introduced R. 220). It is seen, therefore, that both the note governing the ex-Northwest proportional to Central territory and the note governing application of proportional rates to the east provided generally for application on shipments which arrive by boatlines or water transportation line prior to the opening of the Illinois waterways into Chicago, which occurred in 1933 (R298,690). It was

never intended that the proportional rates were to apply on this Illinois grain (R. 218, 274). The tariff applied because of its wording at the time the barge traffic began (R. 274, 257).

REASONABLENESS OF THE PROPOSAL.

Appellees contend, page 48, that the Commission did not treat with the reasonableness of the proposed rates east of Chicago in and of themselves, but erroneously considered the reasonableness of the proposal by comparisons of barge-rail total charges with all-rail combinations, citing *Interstate Commerce Commission* vs *Stickney*, 215 U.S. 98. The Commission did separately consider the reasonableness of the proposed ex-barge rates (248 I.C.C. 307, bottom 309). Therefore, to follow exactly the holding of this Court in *Interstate Commerce Commission* v. *Stickney, supra:* (p. 105 quoted by appellees).

> "If the terminal charge be, in and of itself, just and reasonable, it cannot be condemned or the carrier required to change it on the ground that it, taken with prior charges of transportation over the lines of the carrier or of connecting carriers, makes a total charge to the shipper unreasonable."

Appellees and others contended that the local rates east of Chicago, when applied to the ex-barge grain, would present the unreasonableness of the total charge, so that the Commission further considered the reasonableness of the rates in connection with the inbound barge charge. Whether it is necessary and proper to consider simply the local rate east of Chicago, or whether it is necessary and proper to consider the through charges barge-rail, becomes unimportant, therefore, because the Commission considered both features.

As stated by Appellees at page 51, it is true that this Court in *A. T. & S. F. Ry. Co.* v *U.S.*, 279 U.S. 768, held that the Commission's power is such that they may treat with the reasonableness and propriety of a proportional rate as such. We do not understand that any question is raised on that point. Our problem is not connected with the authority of the Com-

mission to treat with a proportional rate as such. Rather we are concerned with what problems the Commission necessarily has before it in treating with a proportional rate from point B to point C which concededly is but a factor of a through rate from point A to point C through B differing from those problems which may exist when the Commission is considering another proportional between B and C applicable to traffic from X, and differing also from the problems which may exist when the Commission may be considering the rating of local traffic between B and C. While the Commission may pass upon the validity of a proportional rate in a case considering the proportional rate alone, the problems with which the Commission is necessarily concerned in arriving at the propriety of such proportional cannot disregard the fact that it is a part of a through rate. In *A. T. & S. F. Ry. Co.* v. *U.S.*, 279 U.S. 768, the Supreme Court recognized that a through rate is ordinarily lower than a combination of the local rates (p. 771), and that when the through rate was made by a combination, the rate for the later link was spoken of as a "proportional rate" (p. 771), and that on the outbound movement from the proportional-rate point the grain "goes forward on a new bill of lading at the balance of the through rate" (p. 779). This Court, therefore, recognized in the cited case that the proportional lower than the local represented the balance of the through rate. Unless the Commission did, in fixing the proportional consider its relation to the through charges, it would be impossible to use the proportional to make up the balance of any through rate.

SECTION 2 OF THE INTERSTATE COMMERCE ACT

Appellees, at page 54, cite *Chattanooga Packet Co.* v. *I. C. R. R. Co.*, 33 I.C.C. 384. That case was decided in 1915, prior to the amendment of Section 3 (1) made in 1940. (This section is carried in our brief of December 17, 1942 at page 96). Further, it is shown in that case that the traffic, whether ex-barge or ex-rail, came from the same origin, which distinguishes it from our present case. See also *Ex-River Grain*

from St. Louis to the South, 203 I.C.C. 385. The case of *Raw Sugar, New Orleans to Gramercy and Reserve, La.*, 206 I.C.C. 231, cited by appellees, turned upon questions which are not involved in our present case, and is not in point.

Appellees refer to additional Commission decisions which are not in point: in *Bascom Co.* v. *A. T. & S. F. Ry. Co.*, 17 I.C.C. 354, the Commission condemned a proportional rate proposed by a carrier with a restriction limiting its application only to traffic which that carrier brought into the proportional rate point. While condemning a proportional rate as thus limited, the Commission recognized the propriety of proportional rates applicable only to through movements from a defined territory. *Rosenbaum Bros.* v. *L. & N. R. R. Co.*, 22 I.C.C. 62, 66, is to the same effect. *Birkett Mills* v. *D. L. & W. R. R. Co.*, 123 I.C.C. 63, involved a proposed difference in a transit charge for the same service connected with that transit stop. That is not applicable to our problem. *Ex-River Grain from St. Louis to the South*, 203 I.C.C. 385, must be considered in connection with *Ex-River Grain and Products to Mississippi Valley*, 177 I.C.C. 206. The case of *Restriction of Proportional Rates*, 161 I.C.C. 113, turned wholly on an interpretation of Section 3 in 1930 long prior to the amendments of that section made in 1940. It should be noted that the traffic there considered came from the same origin territory. None of these cases cited by appellees holds that the Commission, in fixing a proportional rate, is limited to a consideration only of the transportation factors connected with the movement under the proportional rate alone. Every one of the cases shows that the rate in issue was condemned only because, after consideration of the factors connected with the through movement, the Commission found that there were no distinguishing features connected with the transportation which would distinguish the service under the rate in issue from some other complained of service.

Appellees contend, at page 56, that the decision of this Court in *Texas & P. Ry. Co.* v. *I.C.C.*, 162 U.S. 197, was overruled

by *Interstate Commerce Commission* v. *Alabama M. R. Co.*, 168 U.S. 144. The reading of the several decisions shows separate problems, not an overruling of the first decision. In fact, the case of *Texas & P. Ry. Co.* v. *I.C.C. supra*, has been cited with approval by this Court in many later cases. See *L. & N. R. Co.* v. *Behlmer*, 175 U.S. 648; *East Tenn. V. & G. R. Co.* v. *I.C.C.*, 181 U.S. 1; *I.C.C.* v. *C. G. W. R. Co.*, 209 U.S. 108; *Texas & P. Ry. Co.* v. *U.S.*, 289 U.S. 627, 636. In *Wright* v. *U.S.*, 167 U. S. 512, cited by appellees at page 57, the court considered a movement of beer from Cincinnati to Pittsburgh for each of several dealers at Pittsburgh. The beer, in each instance, originated at Cincinnati and moved to the same rail delivery point at Pittsburgh. For the same service, one dealer paid 11.5 cents and the other paid 15 cents. The court, at page 518, stated:

> "For this case, it is enough to hold that that phrase as found in Section 2 (under substantially similar circumstances and conditions), refers to the matter of carriage, and does not include competition."

The carrier in that case attempted to justify the difference in charge for the same service on the ground that one dealer could take delivery free, if the goods were shipped via Pennsylvania Railroad; whereas, the other dealer could not get free delivery via either railroad, and that this competition warranted the competing railroad making the lower rate to the dealer who could get free delivery if his shipment moved via the Pennsylvania. However, both shipments thereafter moved via B. & O., and the service was strictly from Cincinnati as an origin, to Pittsburgh, the destination, for which a different charge was made based upon this nature of competition. As shown, this *Wright Case* was considering all of the transportation involved, and it was shown that the charge varied for the same total carriage. Our problem requires us to consider whether *the service* is the same. There is nothing in the *Wright Case* to indicate in the slightest that the charge, from Chicago to Columbus for example, must be the same on

grain originating in Chicago as on grain originating in Northwest Territory moving through Chicago to Columbus. Before the *Wright Case* can become applicable here, it must first be found that the services under these various movements are the same.

In *Interstate Commerce Commission* v. *D. L. & W. R. Co.*, 220 U.S. 235, and in *Interstate Commerce Commission* v. *B. & O. R. R. Co.*, 225 U.S. 326, cited by appellees, it was held by this Court that a difference in ownership of property could not be relied upon as justification for a difference in rates, the Court finding (225 U.S. 326, 343):

> "But such features do not affect the carriage, qualify or alter the essential service, which is to get an article from one place to another."

These features as to ownership were said by the Court to be "extraneous to the transportation." However, this Court has also said that a through rate is ordinarily lower than the combination of local rates and that the later link in the rates, when they are made on a combination basis, is spoken of as a proportional, and that when the grain goes forward from the rate-break point, it does so at the balance of the through rate. *A. T. & S. F. Ry. Co.* v. *U.S.*, 279 U.S. 768. Through rates are concededly lower than the local rates to a transit point plus the local rate beyond the transit point. *Central R. R. Co.* v. *U. S.*, 257 U.S. 247, 255. Factors connected with the origination of the grain, the amount of movement it may have had up to the point where the proportional rate is to be picked up, the amount of charges which has already been incurred before that proportional rate is added, cannot be considered "extraneous to the transportation", since it is absolutely necessary to consider those features in order to determine what is the service, and hence what relationship, if any, the proportional rate should have to the through charge.

Appellees state (page 63) that the carriers' proposals are not made dependent upon a difference in the origins from

whence the inbound traffic moves. The ex-barge grain is now using the ex-Northwest proportional to destinations in Central territory. The note governing the use of the ex-Northwest proportional rates (Note 40, pages 89 and 90 of our brief, December 17, 1942), specifically provides that the rates are effective on grain originating in Northwest territory and applies only to grain from the Northwest territory with the single exception providing that the rates would apply "on shipments which arrive by boatlines at Chicago, Ill., Kewaunee, Wis., Mackinaw City, Mich., Manitowoc, Wis., Menominee, Mich., Manistique, Mich., and Milwaukee, Wis." Since ex-lake grain comes in from the Northwest (R. 1205 1206, 1312), the ex-barge grain is the only Illinois originated grain which, today, is securing the use of the ex-Northwest proportional from Chicago to Central territory destinations. With the approval of our proposed change eliminating ex-barge grain from the terms of this note governing the ex-Northwest proportional from Chicago to Central territory, a situation will be created under which the ex-Northwest proportional rates will only be used on grain from the Northwest. The present note governing application of the proportional rates to the east (Note 20, page 87 of our brief dated December 17, 1942), provides that the rates are applicable on grain reaching the reshipping point via rail or water transportation line. It is further provided that the rates will only apply on such traffic when originating at points from which no joint through commodity rates are in effect in connection with the inbound carrier via the reshipping point from original point to final destination. Rail grain originating in Illinois and moving through to the East is covered by one-factor joint through rates (see Exhibit 13, R.E. 60, introduced R. 237; R. 875). The note does not make the rates applicable on trucked-in grain. With the elimination of the ex-barge arrivals, the proportional rates will only be applicable to ex-lake shipments (coming from the Northwest, supra), or to rail arrivals coming from origin territory from which no joint through commodity rates are in effect. There are no such joint rates in effect from the West to

the East (R. 218). Thus it is shown that with the proposed changes made effective, the various origin areas will be carefully provided for and there will be reestablished that separate treatment which was disrupted by the inception of the barge arrivals in Chicago.

SECTION 3 (4) OF THE INTERSTATE COMMERCE ACT

Appellees contend (p. 67) that prior to the amendments made by the Transportation Act of 1940, only those water carriers were subject to the jurisdiction of the Commission who were engaged in the transportation of property partly by railroad and partly by water, when both were used under a common arrangement for continuous carriage or shipment under Section 1 of the Act. That this is in error is shown by *C. R. I & P. Ry. Co.* v. *U.S.*, 274 U.S. 29, 34 et seq., where this Court carefully considered the extent of the jurisdiction of the Commission over land and water transportation, holding that the obvious intention of Congress, as evidenced by the then effective provisions, would be substantially limited in effect if it were to be held that only joint operation under Section 1 was said to be subject to the jurisdiction of the Commission.

The amendment of 1940 added to Section 3 (4) (carried in our brief December 17, 1942 at page 97):

> "As used in this paragraph, the term 'connecting line' means the *connecting line of* any carrier subject to the provisions of this part or any common carrier by water subject to Part 3." (Emphasis supplied).

Any carrier, to come under the provisions of this section, must be shown to be a "connecting line."

The case of *Augusta S. R. Co.* v. *Wrightsville & T. R. Co.*, 74 Fed. 522, cited by appellees, shows that there was an arrangement for a through route even though there may have been no physical connection between the lines. Physical connection is not necessary. See *Chicago, I. & L. Ry. Co.* v. *U.S.*,

270 U.S. 287, at 293. But there must be a through route in order to constitute "connecting lines" (see our brief dated December 17, 1942, page 55). In *Virginian Ry. Co. v. U.S.*, 272 U.S. 658 at 666, cited by appellees, this Court specifically found "through routes to the West were already in existence." For *this* reason, it was therein found to be unnecessary to prescribe through routes.

SECTION 3 (1) of the INTERSTATE COMMERCE ACT

Appellants do not contend as suggested by Appellees (p. 79) that the proviso added to Section 3 (1) should be read into the provisions of Section 3 (4) of the Interstate Commerce Act. The two sections are separate and distinct, and in our brief of December 17, 1942, we treat with those provisions as separate and distinct.

A REASONABLE RATE MIGHT STILL RESULT IN DISCRIMINATION

Appellants have not, as indicated by appellees, at p. 80, suggested that a rate reasonable in itself might not be discriminatory. All that we have contended for here is that the change has been considered by the Commission and approved both as to its reasonableness and as to its lawfulness under Sections 2 and 3 of the Interstate Commerce Act. Appellants have also further pointed to the fact that whether from the facts, disputed or undisputed, in a given case, preference or prejudice does exist, is a question for the Commission. *U. S. v. L & N. R. R. Co.*, 235 U.S. 314, 320; *Western Paper Makers' Chemical Co. v. U.S.*, 271 U.S. 268, 271; *Board of Trade of Kansas City v. U.S.*, 314 U.S. 534, 546.

SECTION 6 (11) (b) of the INTERSTATE COMMERCE ACT

Appellees at page 81 contend that this section evidences an intention to authorize rates on ex-river traffic wholly apart from any considerations as to a through route. Section 6 (13)

(prior to its amendment, by which the number was changed to Section 6 (11), see pages 98, 99 and 100 of our brief of December 17, 1942) conferred power on the Commission to establish through routes and either joint rates between the rail and water lines, or proportional rates via the rail line to and from the port to which *the* traffic is brought, or from which it is taken by the water carrier, the Commission further being given the power to determine to what traffic and in connection with what vessels and upon what terms and conditions such rates shall apply. The extent of jurisdiction possessed by the Commission after the inclusion of this Section 6 (13) into the Act, was carefully considered by the Interstate Commerce Commission in *Procedure under Barge Line Act*, 148 I.C.C. 129, and at the top of page 134 it is stated:

> "But no such requirement may be made without prior full hearing, except that if we declare an emergency to exist, we may establish temporary through routes without notice or hearing."

See also *C.R.I. & P. Ry. Co. v. U.S.*, 274 U.S. 29. It will be seen that there is nothing in this section to indicate any intent to authorize proportional rates apart from the existence of a through route—quite the opposite.

Appellees at page 82 suggest that the 26-cent proportional rate from Chicago to New York, as presently in effect, is a proportional of the character defined by Section 6 (11) (b). Section 6 (11) (b) defines the proportional rates there considered as:

> "By proportional rates are meant those which differ from the corresponding local rates to and from the port and which apply only to traffic which has been brought to the port or is carried from the port by a common carrier by water."

This 26-cent proportional rate from Chicago to New York is applicable to ex-rail grain from Trans-Mississippi River territory and from the Northwest, and it is applicable to lake arrival grain irrespective of whether the vessel bringing it in

is a common, contract or tramp steamer. Therefore, that proportional rate could not be considered to be the nature of proportional rate covered by Section 6 (11) (b).

THE RATE STRUCTURE

Appellees, page 93, suggest that the report of the entire Commission did not rest upon a finding that the order was required to prevent disruption of the all-rail rate structure. In the report of the entire Commission, 248 I.C.C. 307 at page 309, the Commission summarized the findings of the Division, in which summary it is stated that the division found that the present application "results in a breakdown of the all-rail grain rate structure from adjacent origins in Illinois and Indiana." At page 311, the Commission stated:

> "The facts of record, as detailed by the Division and summarized herein, clearly show that respondents are justified, etc."

SECTION 4 OF THE INTERSTATE COMMERCE ACT

Appellees contend, p. 95, that Section 4 (1) (carried in appellees' brief at p. 106) of the Interstate Commerce Act does not provide a rational basis for the Commission's order. The Commission discussed this contravention of the Fourth Section rule in its decision, 248 I.C.C. 307, at 310. Appellees state that if the 26-cent proportional east from Chicago is satisfactory, for example to the Pennsylvania Railroad, the disparity between the proportional rate from Chicago to the East on the one hand, and the higher local rates from intermediate origins to the East on the other, is entirely appropriate under every section of the Act. However, such disparity is appropriate under the Act only because the proportional rate was part and parcel of a through rate covering through transportation. In *Parsons* v. *Chicago & Northwestern Ry.*, 167 U.S. 447, it was held by this Court that a local rate for a shorter distance may be higher than a proportional rate for a longer distance over the same line or route. To constitute a violation of Section 4, the through charge, of which the

proportional is a part, must be shown to be less than the local rate.

The Commission did consider this Fourth Section principle in connection with the through barge-rail charges and the Commission found further that these barge-rail combinations are below the level of the local rates from the reshipping points (248 I.C.C. 307, 310). While the amendments to Section 4 referred to by appellees provided (54 Stat. 904, Section 6 (b):

> "In the case of a carrier heretofore subject to the provisions of paragraph (1) of section 4 of the Interstate Commerce Act, as amended, no rate, fare, or charge lawfully in effect at the time of the enactment of this Act shall be required to be changed by reason of the amendments made to such paragraph by subsection (a) of this section. In the case of a carrier not heretofore subject to the provisions of such paragraph, no rate, fare, or charge lawfully in effect at the time of the enactment of this Act shall be required to be changed, by reason of the provisions of such paragraph, as amended by subsection (a) of this section, prior to six months after the enactment of this Act, or in case application for the continuance of any such existing rate, fare, or charge is filed with the Interstate Commerce Commission within such six months' period, until the Commission has acted upon such application."

The through barge-rail charge was found by the Commission to violate the Fourth Section principle (248 I.C.C. 307, 310). Only the through charge could violate that rule. *Parsons* v. *Chicago & Northwestern Ry.*, 167 U.S. 447. It was not the rail proportional by itself, as contended by appellees, which involved any violation of that principle. *Parsons* v. *Chicago & Northwestern Ry., supra.* Therefore, the Commission's action was proper when, in December of 1941, it made the above finding in connection with the through barge-rail charges in relation to this Fourth Section principle.

The Commission also considered the ex-lake grain rates, finding that rail-lake-rail rates from the Northwest did not contravene the Fourth Section principle or jeopardize the all-rail rate structure (248 I.C.C. 307, 310). Exhibit 75 (R.E. 123, introduced R. 1394) shows the ex-lake charges from Duluth through Chicago to New York, this total being 32.75 cents or 1.75 cents under the local rate east of Chicago. However, it was testified that this grain from Duluth has had a transportation service up to Duluth (R. 279, 1067, 1069).

CONCLUSION

The order of the Interstate Commerce Commission meets the test to which it should have been subjected. The order was within the jurisdiction of the Commission, was made after a full hearing, was based upon essential findings supported by substantial evidence, and was free from any error in the application of law.

It is respectfully submitted that the decree of the District Court should be reversed and the cause remanded with directions to dismiss the bills of complaint.

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